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ILLINOIS COMMERCE COMMISSION

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COMMONWEALTH EDISON COMPANY

Request for Declaratory Ruling or Alternative
Petition pursuant to Section 7-101 of the Public
Utilities Act for consent to continue to operate
under an interconnection agreement that will be
assigned to an affiliated interest.

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02-0261

**PETITION FOR DECLARATORY RULING
OR IN THE ALTERNATIVE
VERIFIED PETITION FOR CONSENT TO CONTINUE TO OPERATE UNDER AN
INTERCONNECTION AGREEMENT THAT WILL BE ASSIGNED TO AN
AFFILIATED INTEREST**

To the Illinois Commerce Commission:

Commonwealth Edison Company ("ComEd") hereby petitions the Illinois Commerce Commission ("Commission") pursuant to Section 5-150 of the Illinois Administrative Procedures Act (5 ILCS 100/5-150) and Section 200.220 of the Commission's Rules of Practice (83 Ill. Adm. Code 200.220) for a declaratory ruling that ComEd is not required to file or seek Commission approval, pursuant to Section 7-101 of the Public Utilities Act ("Act") (220 ILCS 5/7-101) to continue to operate under an Interconnection Agreement ("IA") accepted for filing by the Federal Energy Regulatory Commission ("FERC") as a transmission tariff under the Federal Power Act (16 U.S.C. 791a *et seq.*) after the IA is assigned to an affiliated interest. If the Commission is unable to issue the requested declaratory ruling, then ComEd, in the alternative, petitions the Commission, pursuant to Section 7-101 of the Public Utilities Act ("Act") (220

ILCS 5/7-101), for consent to continue to operate under the IA after it is assigned to an affiliated interest. In support of this Petition, ComEd states as follows:

1. ComEd is a corporation organized and existing under the laws of the State of Illinois with its principal office in Chicago, Illinois. ComEd is engaged in supplying electric energy and delivery services to the public in the northern portion of Illinois and is a public utility within the meaning of Section 3-105 of the Act (220 ILCS 5/3-105) and within the meaning of Section 201(e) of the Federal Power Act (16 U.S.C. 824(e)). ComEd is also an electric utility within the meaning of Section 16-102 of the Act (220 ILCS 5/16-102) and Section 796(22) of the Federal Power Act (16 U.S.C. 796(22)).

2. ComEd is a direct subsidiary of Exelon Energy Delivery, LLC ("EED"), a limited liability company organized and existing under the laws the State of Delaware, and an indirect subsidiary of Exelon Corporation ("Exelon"), a corporation organized and existing under the laws of the State of Pennsylvania. Accordingly, EED and Exelon are "affiliated interests" of ComEd as that term is defined in Section 7-101 of the Act (220 ILCS 5/7-101).

3. Southeast Chicago Energy Project, LLC ("Southeast") is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and is authorized to do business in Illinois.

4. Exelon Generation Company, LLC ("Genco") is a Pennsylvania limited liability company engaged in the business of generating electric power and energy. Genco is a subsidiary of Exelon.

5. Southeast is a direct subsidiary of Genco and an indirect subsidiary of Exelon. Accordingly, Southeast is an “affiliated interest” of ComEd as that term is defined in Section 7-101 of the Act (220 ILCS 5/7-101).

6. Under Section 201(b) of the Federal Power Act, the FERC has exclusive jurisdiction over the transmission of electric energy in interstate commerce and over the facilities for such transmission. 16 U.S.C. 824(b). The FERC accordingly has exclusive jurisdiction over rates, terms and conditions for the provision of transmission service under Section 205 of the Federal Power Act. 16 U.S.C. 824d.

7. ComEd, as a FERC-jurisdictional transmission provider, is required to interconnect generators to its transmission system. The FERC has determined that such interconnection is an element of the transmission service that transmission providers must offer to eligible customers. *Tennessee Power Company*, 90 FERC ¶ 61,238 (2000). Transmission providers enter into interconnection agreements with generation owners that set forth the rates, terms and conditions for this service. Such agreements are accepted for filing by the FERC in the exercise of its exclusive jurisdiction over rates for transmission service.

8. On February 8, 2001, ComEd, in its role as a FERC-jurisdictional transmission provider, executed an IA with Calumet Power, LLC (“Calumet”), a subsidiary of Peoples Energy Resources Corporation (“Peoples Energy”). The IA sets forth the rates, terms and conditions governing the interconnection of Calumet’s 308 MW gas-fired generating facility to the transmission system of ComEd. A full copy of the IA is attached as Exhibit A.

9. On April 6, 2001, pursuant to Part 35 of the FERC’s Regulations, 18 C.F.R. Part 35 (2000), ComEd filed an executed copy of the IA with the FERC. The IA had an effective

date of April 7, 2001. Pursuant to the authority delegated by FERC to its Director, Division of Tariffs and Rates-Central, under 18 C.F.R. § 375.307, ComEd's submittal was accepted for filing on May 10, 2001. The issuance of this order constituted final agency action and the IA became a FERC-filed tariff binding upon ComEd.

10. Genco and Peoples Energy have entered into a Development and Construction Agreement (the "Development Agreement") which contemplates that upon the making of certain contributions of money and property directly or indirectly to Southeast, Genco will have an equity interest of approximately 70% in Southeast and Peoples Calumet, LLC, a subsidiary of Peoples Energy and the parent of Calumet, will have an equity interest not exceeding 30% in Southeast.

11. Pursuant to the Development Agreement, Peoples Energy agreed to cause Calumet to transfer the IA to Southeast.

12. Calumet has expressed a desire to assign, transfer, convey and deliver to Southeast all of Calumet's rights and obligations in and to the IA. The parties have memorialized their intent in an Assignment and Assumption Agreement, a draft of which is attached hereto as Exhibit B.

13. Under the Assignment and Assumption Agreement, Calumet, for and in consideration of a credit for the account of Peoples Calumet, LLC representing an interest in Southeast, and other good and valuable consideration, assigns, transfers, conveys and delivers to Southeast all of Calumet's right, title, benefit, privileges and interests in and to the IA.

14. Similarly, Southeast, under the Assignment and Assumption Agreement, agrees to assume and to pay, perform, fully discharge and fully satisfy all liabilities, duties and obligations of Calumet under the IA.

15. Southeast's access to and right to use the ComEd system for transmission service are governed exclusively by ComEd's Open Access Transmission Tariff ("OATT") and the applicable laws and regulations of the FERC. Similarly, the rates ComEd will charge Calumet for the use of the ComEd transmission system are governed by ComEd's OATT and the applicable laws and regulations of the FERC.

16. The IA, as a transmission rate agreement filed with the FERC, is subject to Section 205 of the Federal Power Act (16 U.S.C. 824d), which requires that all rates for transmission service be "just and reasonable" and prohibits any rates that "grant any undue preference or advantage to any person." This federal statutory requirement, as well as the fact that the IA was entered into with an unaffiliated party and will be assigned to ComEd's affiliate unaltered, demonstrate that ComEd's Illinois jurisdictional ratepayers will not be harmed by the assignment of the IA to an affiliated interest of ComEd or by ComEd's continuing obligations under the IA.

17. The affiliated relationship between ComEd and Southeast will have no effect on ComEd's performance under the IA. ComEd will do no more than continue to provide the FERC-jurisdictional interconnection services to which the IA obligates it.

18. ComEd's request for a declaratory ruling is not based on secrecy or to avoid Commission oversight of ComEd's relationships with its affiliated interests. The IA has already been made public through the April 6, 2001 filing with FERC and the Commission's oversight of

ComEd's relationships with its affiliated interests will not be impacted by the FERC-jurisdictional IA.

19. Section 7-101 of the Act provides in part that "no management, construction, engineering, supply, financial or similar contract and no contract or arrangement for the purchase, sale, lease or exchange of any property or for the furnishing of any service, property or thing, hereafter made with any affiliated interest, as hereinbefore defined, shall be effective unless it has first been filed with and consented to by the Commission or is exempted in accordance with the provisions of this Section...." 220 ILCS 5/7-101(3).

20. ComEd seeks a declaratory ruling from the Commission that this provision does not require ComEd to file, or for the Commission to approve, ComEd's continued operation under a FERC-filed IA that will be assigned to an affiliated interest.

21. As noted above, FERC has sole jurisdiction over the rates, terms and conditions contained in the IA. Under the Supreme Court's ruling in *Nantahala Power & Light Co. v Thornburg* (1986), 476 U.S. 953, 90 L. Ed. 2d 943, 106 S. Ct. 2349, the filed rate doctrine is a rule of federal preemption that requires States to give binding effect to rates filed with and approved by FERC. Therefore, the Commission's oversight of the IA is *de minimus*. Subjecting the IA to additional review in Illinois would be counter productive and inappropriate. ComEd believes the Illinois legislature did not intend for Section 7-101 to apply to transactions that clearly fall under federal jurisdiction.

22. If the Commission is unable to issue the requested declaratory ruling and deems that ComEd must file and seek Commission approval of ComEd's continued operation

under the IA after it has been assigned to an affiliated interest, ComEd, respectfully seeks such approval without waiving the jurisdictional arguments raised herein.

23. Consistent with the requirements of Section 7-101 of the Act, ComEd notes that approval of ComEd's continued operation under the IA, after the IA is assigned to an affiliated interest of ComEd, under the circumstances set forth herein will increase the amount of generation resources needed to help meet growing customer demand for electric power and energy in Northern Illinois. This is especially true because of the Calumet facility's strategic location in the City of Chicago. Accordingly, the public would be inconvenienced by the granting of this Verified Petition.

24. ComEd requests expedited consideration of this Verified Petition pursuant to Section 7-101 and further requests that a hearing in this matter be waived.

25. The supporting testimony of Robert D. Koszyk, Director of Interconnection Services for ComEd, is attached hereto as Exhibit C and incorporated herein by reference.

WHEREFORE, Commonwealth Edison Company respectfully requests that the Illinois Commerce Commission issue a declaratory ruling that ComEd is not required to file, or to seek Commission approval pursuant to Section 7-101 of the Act, to continue to operate under an interconnection agreement accepted for filing by FERC as a transmission tariff under federal law after the interconnection agreement has been assigned to an affiliated interest or, in the alternative, give its consent for Commonwealth Edison Company to continue to operate under an interconnection agreement to which an affiliated interest will be a party.

Respectfully submitted,

COMMONWEALTH EDISON COMPANY

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April XX, 2002

STATE OF ILLINOIS)
) SS:
COUNTY OF COOK)

VERIFICATION

Robert E. Berdelle, first being duly sworn upon oath, deposes and says he is the Vice President and Chief Financial Officer of Commonwealth Edison Company, an Illinois corporation; that he has read the above and foregoing Verified Petition by him subscribed, and knows the contents thereof; and that the facts set forth therein are true and correct to the best of his knowledge and belief.


ROBERT E. BERDELLE

SUBSCRIBED and SWORN to
before me this 2 day
of April, 2002.


NOTARY PUBLIC

